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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES STEPHENS,

Defendant and Appellant.

C061726

(Super. Ct. No. 07F10845)

In a bench trial following his waiver of trial by jury, defendant James Stephens was convicted of 11 counts of lewd and lascivious acts with a child under age 14. (Pen. Code, § 288, subd. (a)--counts six through sixteen.)¹ The court found that defendant engaged in substantial sexual conduct in nine of those counts. (§ 1203.066, subd. (a)(8)--counts six through fourteen.) He was acquitted of five additional counts of the same offense and an enhancing allegation (counts one through five).

¹ Undesignated statutory references are to the Penal Code.

Defendant was sentenced to state prison for 26 years, consisting of the middle term of six years plus 10 consecutive terms of two years each. He was awarded 470 days of custody credit and 70 days of conduct credit, and was ordered to pay a \$3,000 restitution fine (\$ 1202.4, subd. (b)), a \$3,000 restitution fine suspended unless parole is revoked (\$ 1202.45), a \$220 court security fee (\$ 1465.8), a \$242.29 main jail booking fee, and a \$27.22 main jail classification fee.

FACTUAL BACKGROUND²

Victim T.S. was born in August 1994. Her mother, R.S., is married to defendant.

From age seven through age 10, T.S. resided in foster care. On her 11th birthday, T.S. arranged with R.S. to leave the foster placement and to reside with R.S. and defendant. The next day, she left the foster home and obtained a ride to R.S.'s residence. That night, she and defendant had sexual intercourse.

A couple of days later, defendant masturbated on her and she had to wipe his ejaculate off of her.

One night while she was 11 years old, T.S. spent the night at her cousin's house. Defendant and R.S. were also present. T.S. testified that she and defendant engaged in an act of vaginal intercourse.

² Our statement of facts is limited to the counts on which defendant was convicted.

During the year that followed her departure from foster care, T.S. had intercourse with defendant "almost every night," which was "more than 20 times."

T.S. testified that she did not have sex with defendant when she was 12 years old because she was residing in a group home. She also testified that he put his penis in her vagina when she was 13 years old.

One or two times, T.S. had to put her mouth on defendant's penis. She could not remember the details. In a forensic interview, T.S. had stated that defendant had ejaculated in her mouth about a week after the initial incident of sexual intercourse. She also described an incident in which R.S. caught her orally copulating defendant.

Pursuant to Evidence Code section 1108, T.S. described an instance of oral sex with defendant while she was staying with R.S. in Reno, Nevada.

The defense rested without presenting evidence or testimony. Defendant appeals.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the

date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Our review of the record discloses that defendant is entitled to an additional day of presentence custody credit. He was in custody from November 15, 2007, through sentencing on February 27, 2009, a period of 471 days. We shall modify the judgment accordingly. Our modification does not affect defendant's entitlement to conduct credit.

We note that the recent amendments to section 4019 do not operate to modify defendant's entitlement to credit, as he was required to register as a sex offender. (§ 4019, subds. (b)(1), (2) & (c)(1), (2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to award defendant 471 days of presentence custody credit. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

We concur: BUTZ, J.

SIMS, Acting P. J.

ROBIE, J.